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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS-FV-11-0094; FV12-915-1 FIR]

Avocados Grown in South Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Avocado Administrative Committee (Committee) for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container of Florida avocados handled. The Committee locally administers the marketing order for avocados grown in South Florida. The interim rule decreased the assessment rate to reflect a reduction in expenditures for research and to help reduce industry costs.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Doris Jamieson or Christian D. Nissen, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable

Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

Under the order, Florida avocado handlers are subject to assessments, which provide funds to administer the

order. Assessment rates issued under the order are intended to be applicable to all assessable Florida avocados for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on April 1, and ends on March 31.

In an interim rule published in the **Federal Register** on July 2, 2012, and effective on July 3, 2012, (77 FR 39150, Doc. No. AMS-FV-11-0094, FV12-915-1 IR), § 915.235 was amended by decreasing the assessment rate established for Florida avocados for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container. The decrease in the assessment rate reflects a reduction in Committee expenditures for research and will help reduce industry costs while still providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and around 300 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service (NASS), the average price for Florida avocados during the 2011-12 season was around \$16.50 per 55-pound bushel container and total shipments were near 1,200,000 55-bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In

addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than \$750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012-13 and subsequent fiscal periods from \$0.37 to \$0.25 per 55-pound bushel container of avocados. The Committee unanimously recommended 2012-13 expenditures of \$324,575 and an assessment rate of \$0.25 per 55-pound bushel container of avocados. The assessment rate of \$0.25 is \$0.12 lower than the rate previously in effect. Applying the \$0.25 per 55-pound bushel container assessment rate to the Committee's 1,000,000 55-pound bushel container crop estimate should provide \$250,000 in assessment income. Thus, income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover the budgeted expenses. The decrease in the assessment rate reflects a reduction in Committee expenditures for research and will help reduce industry costs.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 14, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic OMB Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida

avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Comments on the interim rule were required to be received on or before August 31, 2012. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0094-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (77 FR 39150, July 2, 2012) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Reporting and recordkeeping requirements.

PART 915 - AVCOADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim rule amending 7 CFR part 915, which was published at 77 FR 39150 on July 2, 2012, is adopted as a final rule, without change.

Dated: November 28, 2012

David R. Shipman
Administrator
Agricultural Marketing Service

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